U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN C. KEENER and U.S. POSTAL SERVICE,
POST OFFICE, Warren, OH

Docket No. 03-672; Submitted on the Record;
Issued May 16, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that on August 30, 2001 she sustained an injury in the performance of duty.

On November 15, 2001 appellant, then a 48-year-old vending and supply clerk, filed a claim alleging that on August 30, 2001 she sustained left shoulder strain as she was throwing parcels. Appellant did not stop work.

In an attached statement, appellant claimed that her left shoulder was originally injured in 1993 and was "never fixed right." She claimed that the pain never went away and with throwing parcels it became worse.

In support of her claim, appellant submitted a November 19, 2001 Form CA-20 attending physician's report from the Country Doctor's Clinic, Inc., a chiropractic practitioners' clinic, which noted a history of upper and lower shoulder pain after throwing parcels faster and which diagnosed tenosynovitis/shoulder, left, associated with stress/cervical segmental dysfunction.[1] The treating chiropractor noted a history of left shoulder symptoms and noted left shoulder findings, but noted no objective or subjective evidence of cervical involvement to support a diagnosis of cervical segmental dysfunction. In reporting appellant's history, however, the chiropractor noted a history of 1993 cervical and thoracic spine problems. There was no indication that any x-rays were obtained at any time. The chiropractor checked "yes" to the form question of whether the condition found was caused or aggravated by an employment activity.

By letter dated January 24, 2002, the Office of Workers' Compensation Programs requested further information including the answers to an enclosed questionnaire.

[1] The individual chiropractor treating appellant provided an illegible signature.

In response appellant submitted a January 24, 2002 limited-duty job offer which she accepted on January 25, 2002.

In a separate statement, in answer to the Office's questionnaire, appellant noted that she did report the injury within 30 days as she had told her supervisors that she was in pain, that the original injury in 1993 left her with residual pain in the base of her shoulder blade, that she continued to throw parcels, and that in July 2001 the pain was so bad she had to use leave and seek medical treatment.

Appellant also submitted a February 8, 2002 Form CA-17 report signed by her treating chiropractor, which noted a diagnosis of left shoulder sprain and noted that she could handle 5-pound parcels continuously and 10-pound parcels intermittently.

By decision dated February 25, 2002, the Office rejected appellant's injury claim finding that, although it accepted that the incident, throwing parcels, occurred as alleged, the medical evidence of record did not establish that she sustained any specific injury as a result. The Office discounted the medical evidence from appellant's chiropractor stating that he failed to diagnose a subluxation as demonstrated by x-ray to exist, and therefore did not constitute as a physician under the Federal Employees' Compensation Act.

On March 7, 2002 appellant, through her representative, requested an oral hearing.

In support she submitted two CA-17 forms, dated March 22 and April 26, 2002, from her chiropractor which noted a diagnosis of left shoulder sprain and noted that she could handle 10-pound parcels continuously and 20-pound parcels intermittently.

A hearing was held on October 24, 2002 at which appellant testified. By decision dated December 6, 2002, the hearing representative affirmed the February 25, 2002 Office decision finding that appellant had failed to submit adequate medical evidence to establish that she sustained an injury on August 30, 2001. The hearing representative found that appellant's treating chiropractor had not diagnosed a subluxation as demonstrated by x-ray to exist and, therefore, was not considered to be a physician under the Act.

The Board finds that appellant has failed to establish that on August 30, 2001 she sustained an injury in the performance of duty.

An employee seeking benefits under the Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally

[2] 5 U.S.C. §§ 8101-8193.

related to the employment injury.[3] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of rationalized medical evidence, to establish that the employment incident caused a personal injury.[6] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[7]

In this case, the Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, appellant has submitted insufficient medical evidence to establish that the employment incident caused a personal injury.

Appellant submitted medical evidence from her treating chiropractor which diagnosed tenosynovitis/shoulder, left, associated with stress/cervical segmental dysfunction. However, no evidence was presented that x-rays had been taken and no objective or subjective findings were noted to support a diagnosis of cervical segmental dysfunction.

Section 8101(2) of the Act provides that the term "'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...."[8] Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[9]

In this case, appellant's chiropractor did not take x-rays and did not diagnose any subluxations as demonstrated by x-ray to exist. Further, his only spinal-related diagnosis, cervical segmental dysfunction, was not supported by any objective or subjective findings to suggest that the condition currently existed, rather than being based solely on a past history of

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[7] *See Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976).

[8] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[9] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

cervical and thoracic spinal problems. Therefore, appellant's treating physician cannot be considered to be a physician under the Act, and as there was no other medical evidence submitted to the record, appellant has failed to provide rationalized medical evidence to establish her claim and therefore failed to establish that the throwing of parcels on August 30, 2001 caused a specific employment injury.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated December 6 and February 25, 2002 are hereby affirmed.

Dated, Washington, DC
May 16, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member